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3   **UNITED STATES DISTRICT COURT**

4   **NORTHERN DISTRICT OF CALIFORNIA**

5   **SAN JOSE DIVISION**

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7   CISCO SYSTEMS INC,   Case No. 14-cv-05344-BLF
                    Plaintiff,
8
        v.   **ORDER DENYING MOTIONS TO SEAL**
9
    ARISTA NETWORKS, INC.,   [Re: ECF 271, 280]
10
                    Defendant.
11

12   Before the Court is Arista's administrative motion to file under seal Exhibit C to the

13   declaration of David J. Rosen in support of Arista's Partially Unopposed Motion to Stay Patent

14   Claims Pending *Inter Partes* Review, ECF 271, and Cisco's administrative motion to file under

15   seal Exhibits 1 and 2 to the Declaration of John Neukom in Support of Cisco's Opposition to

16   Arista's Motion to Stay, ECF 280. For the reasons stated below, the motions are DENIED.

17   **I.   LEGAL STANDARD**

18   Unless a particular court record is one 'traditionally kept secret,'" a "strong presumption in

19   favor of access" to judicial records "is the starting point." *Kamakana v. City & Cnty. of Honolulu*,

20   447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d

21   1122, 1135 (9th Cir. 2003)). A party seeking to seal judicial records relating to a dispositive

22   motion bears the burden of overcoming this presumption by articulating "compelling reasons

23   supported by specific factual findings that outweigh the general history of access and the public

24   policies favoring disclosure." *Id.* at 1178-79. This standard is invoked "even if the dispositive

25   motion, or its attachments, were previously filed under seal or protective order." *Id.* at 1179

26   (citing *Foltz*, 331 F.3d at 1136). Compelling reasons for sealing court files generally exist when

27   such "'court files might have become a vehicle for improper purposes,' such as the use of records

28   to gratify private spite, promote public scandal, circulate libelous statements, or release trade

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1   secrets." *Id.* (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)). However,

2   "[t]he mere fact that the production of records may lead to a litigant's embarrassment,

3   incrimination, or exposure to further litigation will not, without more, compel the court to seal its

4   records." *Kamakana*, 447 F.3d at 1179.

5   In this District, parties seeking to seal judicial records must furthermore follow Civil Local

6   Rule 79-5, which requires, *inter alia*, that a sealing request be "*narrowly tailored* to seek sealing

7   *only* of sealable material." Civil L.R. 79-5(b) (emphasis added). Where the submitting party

8   seeks to file under seal a document designated confidential by another party, the burden of

9   articulating compelling reasons for sealing is placed on the designating party. *Id.* 79-5(e).

10   **II.   DISCUSSION**

11   Arista moves to seal portions of Exhibit C because Cisco designated Exhibit C as "Highly

12   Confidential—Attorneys Eyes Only." Declaration of David Rosen, ECF 271-1. Cisco, as the

13   designating party, did not file a declaration in support of sealing Exhibit C. Cisco moves to seal

14   Exhibits 1 and 2 because Arista designated them as "HIGHLY CONFIDENTIAL–SOURCE

15   CODE" and/or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY." Arista, as the

16   designating party, did not file a declaration in support of sealing Exhibits 1 and 2. Accordingly,

17   the Court DENIES Arista's motion to seal and Cisco's motion to seal.

18   **III.   ORDER**

19   For the foregoing reasons, the sealing motions at ECF 271 and ECF 280 are DENIED.

20   Under Civil Local Rule 79-5(e)(2), for any request that has been denied because the party

21   designating a document as confidential or subject to a protective order has not provided sufficient

22   reasons to seal, the submitting party must file the unredacted (or lesser redacted) documents into

23   the public record no earlier than 4 days and no later than 10 days form the filing of this order.

24   **IT IS SO ORDERED.**

25   Dated: June 15, 2016

26   _____
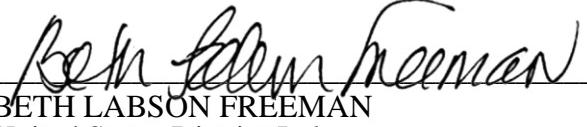
27   BETH LABSON FREEMAN
                                                         United States District Judge

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